

REMARKS

Summary of the Bases for Objection and Rejection

Claims 1-2, 4-5, 8-11, 18-19 21-23 and 25-29 are currently pending. The allowability of claim 7 has been withdrawn in view of a newly cited reference to Busby et al. (U.S. Patent No. 4,127,685) (hereinafter the "Busby" reference).

Claims 18 and 22 are currently rejected under 35 U.S.C. 112, first paragraph, as allegedly failing to meet the written description requirement.

Claims 1-2, 4-5, 8-11, 18-19, 21-23 and 25-29 are currently rejected under 35 U.S.C. 103(a) as allegedly being unpatentable over Greenlee (U.S. Patent No. 5,248,546) (hereinafter the "Greenlee" reference) in view of the Busby reference.

The Applicants shall address each of these bases of objection and rejection in Sections I and II, respectively, which follow.

I. 35 U.S.C. §112, First Paragraph

Claims 18 and 22 have been amended to recite that the film has a degree of stiffness suitable for wrapping foods and an oxygen transmission rate suitable for wrapping foods. Applicants believe that stiffness and flexibility are simply inverse measurements of the same property, so that this amendment does not change the scope of claims 18 and 22. For example, at page 3, the specification of the present application states "[t]he amount and type of plasticizer dictate the degree of stiffness of the composite film, and, for a given thickness, or gauge of the composite film, an increase in plasticizer provides an increase in OTR." Further support for the present amendment can be found throughout the specification at, for example, page 2, line 25 to page 3, line 2; page 3, lines 12-15; and page 5, lines 11-31.

Applicants believe that the recitation in claims 18 and 22 that the film has a degree of stiffness suitable for wrapping foods and an oxygen transmission rate suitable for wrapping foods is fully supported in the specification and that one of ordinary skill would understand from the specification that the inventors had possession of the invention at the time the application was filed. As described in the specification, the present films are used in packaging food, and thus should have a degree of stiffness suitable for wrapping foods

and an oxygen transmission rate suitable for wrapping foods. For example, at page 2, the specification of the present application explains that the film is meant for use in packaging foods such as “refrigerated fresh meat and freshly cut produce” to prolong their state of freshness. At pages 2-3, the specification states that the packaging films have “gas permeability rate (specifically OTR) control.” Although the specific oxygen transmission rate desired for particular applications varies based in part upon the type of product to be packaged, the present application provides examples of oxygen transmission rates for packaging foods such as meat, lettuce and coleslaw, that could be used by one of ordinary skill in the art in making films of the present technology. In reading the present application, one of ordinary skill in the art would appreciate that the films disclosed are meant to have a degree of stiffness suitable for wrapping foods and an oxygen transmission rate suitable for wrapping foods. One of ordinary skill in the art would understand that these properties can be varied within the scope of the invention while maintaining the degree of stiffness and the oxygen transmission rate in ranges suitable for their intended purpose of packaging foods.

Claim 22 has been further amended to recite that the at least two layers are sufficiently distinct from each other to have different melting points and one of said at least two layers melts and seals to itself when heat is transferred through the other layer. Support for the present amendment can be found throughout the specification at, for example, page 11, line 27 to page 12, line 5. The present application describes on page 12, for example, an embodiment in which the “stiffer outer layer of the bag seals shut because the less stiff inner layer with a lower melting point melts together at a sealing seam.” Applicants believe that the present amendment is fully supported in the specification and one of ordinary skill would understand from the specification that the inventors had possession of the invention at the time the application was filed.

Applicants believe that the rejections under 35 U.S.C. 112, first paragraph have been overcome, and that claims 18 and 22 are now in a condition for allowance.

II. 35 U.S.C. §103(a)

Independent claims 1 recites that the plasticizer is at least one of epoxidized soya bean oil and di(2-ethyl-hexyl) adipate. Independent claim 18, as currently amended,

recites that the plasticizer is a mixture comprising a primary plasticizer and a secondary plasticizer, wherein the secondary plasticizer is epoxidized soya bean oil. Independent claim 22 recites that the plasticizer is at least one of epoxidized soya bean oil or di(2-ethyl-hexyl) adipate.

The January 9, 2006 Office Action combines the Greenlee and Busby references in forming the current obviousness rejection to the recited plasticizers. In particular, the January 9, 2006 Office Action states, "it would have been obvious to one of ordinary skill in the art to have employed the epoxidized soya bean oil plasticizer, as taught in Busby, in the packaging film of Greenlee because the epoxidized soya bean oil material provides improved adhesion of the film." (See January 9, 2006 Office Action at p. 5). This assertion is not correct, however, because one of ordinary skill in the art would not have a motivation to combine the Busby and Greenlee references.

The Greenlee reference specifically states that liquid plasticizers such as epoxidized soy oil "are detrimental." (Greenlee at Col. 14, lines 41-43.) This statement clearly teaches away from using soy oil as a plasticizer in the films taught by Greenlee. Because prior art references must be considered in their entirety, (See MPEP §2141.02), this statement cannot be ignored in determining the knowledge and motivation of one of ordinary skill in looking at the cited references.

In order to establish a *prima facie* case of obviousness, there must be both (1) some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings, and (2) a reasonable expectation of success. (See MPEP §2142). Given that the Greenlee reference teaches away from using epoxidized soy oil, one of ordinary skill in the art would not be motivated to combine the Greenlee reference with the Busby reference. Similarly, in looking at a combination of the Greenlee and Busby references, one of ordinary skill in the art would not have a reasonable expectation of success in using an epoxidized soy oil as a plasticizer because the Greenlee reference teaches that such use is detrimental.

Additionally, the Greenlee reference is directed to the manufacture of a layered structure which is useful as the inner liner of a refrigerator. Such a refrigerator liner, while being "preferably not objectionable for direct food contact," (See Greenlee at Col. 2, lines

22-23), does not teach or suggest a packaging film as described in the present application. For example, the articles disclosed in Greenlee “are preferably rigid” and therefore “plasticizer levels are limited.” (See Greenlee at Col. 6, lines 9-10.) As another example, although Greenlee states that the second layer has a heat distortion temperature that “is at least three degrees celsius higher than said heat distortion temperature of” the first layer, (See Greenlee at Col. 2, lines 32-39), Greenlee does not disclose that one of the layers melts and seals to itself when heat is transferred through the other layer as recited in currently amended claim 22 and further supported in the instant specification. Further, as stated in the January 9, 2006 Office Action, Greenlee does not teach two layers having different gas permeabilities. (See January 9, 2006 Office Action at p. 4) (emphasis added.) While the Office Action asserts that gas permeabilities could be determined by one of ordinary skill in the art, (See January 9, 2006 Office Action at p. 4), such a person of ordinary skill would have no motivation to modify Greenlee in such a manner as to introduce oxygen permeability suitable for packaging foods. Greenlee states that plasticizer levels need to be limited, (See Greenlee at Col. 6, lines 9-10), and further states that compounds such as epoxidized soya bean oil, which interfere with HCFC barrier performance, are detrimental, and finally indicates that epoxidized soy oil compounds “are preferably absent or present at minimal levels....” (See Greenlee at Col. 14, lines 30-43.) The Greenlee reference itself, therefore, does not disclose or teach all of the limitations of the presently amended claims either alone, in combination with the Busby reference, or in combination with the knowledge of one of ordinary skill in the art.

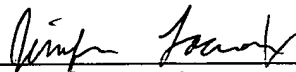
Applicants respectfully request that the rejection under 103(a) be withdrawn. Applicants further believe that the claims as currently amended are in a condition for allowance.

CONCLUSION

Claims 1, 2, 4, 5, 8-11, 18, 19, 21-23 and 25-29 currently stand rejected. In view of the amendments and arguments provided herein, Applicants believe that all bases for rejecting claims 1, 2, 4, 5, 8-11, 18, 19, 21-23 and 25-29 have been overcome. Applicants respectfully submit that Claims 1, 2, 4, 5, 8-11, 18, 19, 21-23 and 25-29 of the instant application are in condition for allowance.

The Commissioner is hereby authorized to charge any fees which may be required or credit any overpayment to Account No. 13-0017.

Respectfully submitted,

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Date: April 4, 2006